

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 )  
5 MUR 6285 )

6 DEAN BLACK FOR CONGRESS AND )

7 WESLEY L. BUNCE, AS TREASURER )

8 POWER SOLUTIONS ELECTRIC, INC. )

9 TJSR ENTERPRISES, INC. )  
10

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

11  
12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, matters that are low-rated

14 are

15 forwarded to the Commission with a recommendation for dismissal. The Commission has  
16 determined that pursuing low-rated matters, compared to other higher-rated matters on the  
17 Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases.  
18 The Office of General Counsel scored MUR 6285 as a low-rated matter.

19 In this matter, the complainant, Bud Ahlheim, asserts that Dean Black for Congress and  
20 Wesley L. Bunce, in his official capacity as treasurer ("the Committee"),<sup>1</sup> and two corporations,  
21 Power Solutions Electric, Inc. ("Power Solutions"), and TJSR Enterprises, Inc. ("TJSR  
22 Enterprises"), collectively violated 2 U.S.C. § 441b(a) when the Committee allegedly accepted  
23 contributions in the amount of \$500 each from the two corporations, and subsequently failed to  
24 refund them. In addition, the complainant states that the Committee failed to file its FEC  
25 Form 1 Statement of Organization within 10 days after Mr. Black filed his FEC  
26 Form 2 Statement of Candidacy, as required by 2 U.S.C. § 433, and that it also untimely filed its  
27 2010 April Quarterly Report, which was postmarked April 16, 2010, in violation of 2 U.S.C.  
28 § 434(a).

<sup>1</sup> Dean Black is a candidate for Congress from Florida's Third Congressional District.

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1 Robert T. Smith, the Committee's campaign coordinator, filed a response on behalf of  
2 the Committee. First, the response maintains that the Committee refunded the contributions  
3 from Power Solutions and TJSR Enterprises, which according to the Committee's 2010 April  
4 Quarterly Report, had been made on March 1, 2010 and March 8, 2010, "as soon as the mistake  
5 was discovered." Attached to the response are copies of certified refund checks issued to Power  
6 Solutions on March 31, 2010, and to TJSR Enterprises issued on May 5, 2010. Second, the  
7 response takes the position that the Committee filed its Statement of Organization timely,  
8 although it acknowledges that some confusion might have arisen because the Committee later  
9 filed what it describes as a "duplicate" Statement of Organization along with its subsequently-  
10 filed 2010 April Quarterly Report. According to the response, the Committee filed the alleged  
11 duplicate because it had not yet received an FEC password that would allow it to file its reports  
12 electronically. Finally, the Respondents assert that the Committee timely mailed its 2010 April  
13 Quarterly Report "on or before midnight" on April 15, 2010, the day on which it was due, see  
14 2 U.S.C. § 434(a)(2). The Committee explains that a staffer, who mailed the report at a local  
15 post office, encountered large crowds because April 15<sup>th</sup> was also the due date for many U.S.  
16 taxpayers to file their tax returns, and that the staffer twice sought and received assurances from  
17 postal service personnel that the report would be postmarked as having been mailed on April  
18 15<sup>th</sup>.

19 Power Solutions also filed a response in which it acknowledges contributing \$500 to the  
20 Committee on March 1, 2010, and states that the Committee refunded its contribution on  
21 March 31, 2010. TJSR Enterprises did not respond.

22 It appears that the Committee's Statement of Organization and its 2010 April Quarterly  
23 Report were filed untimely. These submissions, which were delivered using first class mail,

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1 were required to be received on or before the prescribed filing date(s) in order to be timely filed.  
2 See 11 C.F.R. § 100.19(b)(2).<sup>2</sup> The Commission's website discloses that Mr. Black filed his  
3 Statement of Candidacy on March 26, 2010; thus, the Committee's Statement of Organization,  
4 if filed by first class mail, should have been received by the Commission no more than 10 days  
5 later, or by April 5, 2010, and the Committee's 2010 April Quarterly Report should have been  
6 received by the Commission, not just postmarked, no later than April 15, 2010. Instead, the  
7 Commission's website discloses that the Committee's Statement of Organization and its 2010  
8 April Quarterly Report were not filed until April 23, 2010.

9 Additionally, it appears that the Committee accepted prohibited corporate contributions  
10 from Power Solutions and TJSR Enterprises, but subsequently took remedial action by  
11 refunding the corporate contributions.<sup>3</sup> Thus, in light of the technical nature of the reporting  
12 violations, coupled with the remedial action taken by the Committee in refunding the apparent  
13 corporate contributions, and in furtherance of the Commission's priorities and resources,  
14 relative to other matters pending on the Enforcement docket, the Office of General Counsel  
15 believes that the Commission should exercise its prosecutorial discretion and dismiss this  
16 matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office  
17 intends on reminding Dean Black for Congress and Wesley L. Bunce,

<sup>2</sup> In contrast, submissions using registered or certified mail, or using overnight mail with an online tracking system, are considered to be filed as of the date of the U.S. postmark. 11 C.F.R. § 100.19(b)(1). When candidate Dean Black originally filed his Statement of Candidacy, according to delivery information accompanying the filing, he did so by depositing it with Federal Express's Next Day Delivery service on March 26, 2010. Therefore, Mr. Black's Statement of Candidacy is deemed to have been filed on March 26, 2010.

<sup>3</sup> Political committees are permitted to deposit contributions that "present genuine questions" as to whether they were made by corporations or other prohibited sources, subject to such contributions being returned within 30 days if they are determined to be illegal, see 11 C.F.R. § 103.3(b). Here, however, the Committee reported that it had received contributions from two incorporated entities, Power Solutions Electric, Inc. and TJSR Enterprises, Inc., which appear to be prohibited on their face. Thus, the contributions should have been returned within 10 days, as set forth in 11 C.F.R. § 103.3(b)(1). Instead, the Committee returned Power Solution's March 1, 2010 contribution by check dated March 31, 2010, or 30 days later, and returned TJSR Enterprise's March 8, 2010 contribution by check dated May 5, 2010, or 58 days later.

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1 in his official capacity as treasurer, Power Solutions Electric, Inc., and TJSR Enterprises, Inc.,  
2 of the prohibitions under 2 U.S.C. § 441b(a), concerning the making and acceptance of corporate  
3 contributions, and also reminding Dean Black for Congress and Wesley L. Bunce, in his official  
4 capacity as treasurer, of the Commission's filing requirements under 2 U.S.C. §§ 433 and  
5 434(a).

6 **RECOMMENDATIONS**

7 The Office of General Counsel recommends that the Commission dismiss MUR 6285,  
8 close the file, and approve the appropriate letters. Additionally, this Office recommends  
9 reminding Dean Black for Congress and Wesley L. Bunce, in his official capacity as treasurer,  
10 Power Solutions Electric, Inc., and TJSR Enterprises, Inc., of the prohibitions under 2 U.S.C.  
11 § 441b(a), concerning the making and acceptance of corporate contributions, and also reminding  
12 Dean Black for Congress and Wesley L. Bunce, in his official capacity as treasurer, of the filing  
13 requirements under 2 U.S.C. §§ 433 and 434(a).

14 Thomasenia P. Duncan  
15 General Counsel  
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18 8/11/10  
19 \_\_\_\_\_  
20 Date

21 BY:

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